



VICTORIA POLICE

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(Australian Crime Commission)
Parliament House
Canberra ACT 2600

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

REC'D: *Victoria Police*.....

FROM:

AUTHORISED FOR PUBLICATION:

SECRETARY: *[Signature]*.....

Dear Mr Curtis,

Review of the Australian Crime Commission Act 2002

I write in response to your letter dated 27 July, 2005 where you invite submissions to the Parliamentary Joint Committee on the Australian Crime Commission's ("PJC") review of the *Australian Crime Commission Act 2002* ("the Act").

First, I would like to thank you for the opportunity to respond to the PJC's review of the Act. As a member of the Australian Crime Commission's Board I believe I am well positioned to comment on the operation of the ACC and also on the Act.

The transition from the National Crime Authority ("NCA") model to the current ACC model has not been an easy process for those involved. Nevertheless, the ACC is operating effectively and I am confident that the ACC will become a far more effective organisation moving forward.

Having considered the terms of reference for this review, I make the following comments.

The effectiveness of the investigative, management and accountability structures established under the Act

Accountability

The current arrangements in respect to the PJC appear to be a carryover from the time the committee had oversight of the NCA. I am of the belief that there are sufficient reporting obligations, legislative requirements and oversight by both the ACC Board and the Intergovernmental Committee on the ACC ("IGC-ACC"), without the need for additional layer of accountability through this PJC.

I note that currently the Chief Executive Officer of the ACC reports to the Commonwealth Minister for Justice and that in addition to the ACC Board, the ACC also has to report to this PJC and the IGC-ACC.

The Commonwealth intends to establish an independent body (likely to be called the Australian Commission for Law Enforcement Integrity ("ACLEI")) to detect and investigate corruption among law enforcement officers at the national level. It is envisaged that the new body's jurisdiction will cover the Australian Federal Police and the ACC, including State and Territory secondees to the ACC. ACLEI will have a suite of powers, including own motion investigation powers. These new arrangements will provide additional scrutiny of the ACC.

The layer of accountability provided by the PJC limits the effectiveness of the ACC through additional and unnecessary reporting. The IGC-ACC is comprised of State and Commonwealth Ministers and can effectively monitor the performance of the ACC. Furthermore, the ACC Board comprises State and Commonwealth heads of agencies and given the governance arrangements within the ACC Board, I believe the ACC is effectively monitored without the need for the PJC.

Funding

The second area which I believe needs to be examined is the Commonwealth's ACC funding model. The current arrangements whereby Commonwealth funding is provided, but tied to a particular crime category (for instance, the determination in respect to money laundering & tax fraud whereby \$29.97m over 4 years was provided, with an expectation that approximately \$53m would be subject to tax assessment and proceeds of crime action), reduces the flexibility of the ACC and is in conflict with the governance model. Sufficient funds need to be provided by the Commonwealth for the ACC to coordinate intelligence and investigations without the funding being tied to a particular crime category.

The ACC provides advice to the ACC Board on how the resources should be allocated, according to the priorities set by the ACC Board. It is then a matter for the ACC Board to determine how the funding should be allocated, having regard to the national priorities, risks and threats. The current funding arrangements usurp the authority of the ACC Board, whereby the Commonwealth sets the agenda and prioritises the allocation of resources through tied funding.

The transition from the NCA to the ACC has resulted in Victoria Police absorbing significant costs which were previously met by the NCA. For instance, some joint operations between Victoria Police and the ACC now involve Victoria Police having to meet some of the staffing and operational costs which were hitherto met by the NCA. This shift of costs unfairly impacts on State law enforcement budgets. There have been occasions where Victoria Police has been unable to provide sufficient resources to these joint operations due to local policing priorities. In such cases there has been a negative impact on the joint operations.

I reiterate the need for the Commonwealth to adequately resource the ACC to carry out its functions without the need for State law enforcement to supplement the ACC's budget.

Whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century

Examinations

Division 2 of the Act provides the ACC with the power to conduct examinations. It has been raised with me whether the ACC needs to retain these powers in light of similar coercive powers regimes in operation in other parts of Australia. It is my view that the examination process is a powerful tool in eliciting intelligence and evidence that would otherwise be impossible to obtain using conventional investigative methodology. The value of the examinations processes to law enforcement cannot be over-estimated.

Recently, Victoria Police was provided with the power to conduct its own examinations through the enactment of the *Major Crime (Investigative Powers) Act 2004 (Vic)*. It is the view of Victoria Police that the powers provided to Victoria Police will complement similar powers provided to the ACC. Victoria Police does not believe the power to conduct examinations will duplicate the powers granted to the ACC. The point needs to be made that it would be counter-productive to remove the examination powers available to the ACC on the basis that similar powers are now available to many of the State law enforcement agencies.

Contempt Provisions

The *Major Crime (Investigative Powers) Act 2004 (Vic)* was introduced to address domestic organised crime. It was not intended to be used to address significant national issues to which the ACC is responsible for.

A feature of the Victorian legislation which is not available within the Act is the provision of the offence of contempt. It is recognised that the offence of contempt is normally a power available only to a royal commission, however the Victorian Parliament recognised the changing nature of organised crime and the real need to ensure that adequate sanctions were available to break the criminals' code of silence. It is the view of Victoria Police that given the national focus of the ACC in addressing serious and organised crime that the Act should be amended to include the offence of contempt, similar to section 49 of the *Major Crime (Investigative Powers) Act 2004 (Vic)*.

Composition of the ACC Board

Law enforcement has recognised that the organised crime environment is constantly evolving and changing. Transnational organised crime does not recognise State or Commonwealth boundaries and similarly, criminals do not notice whether or not particular crimes are State or Commonwealth offences. Organised crime will follow wherever the money is and more often than not this money is in electronic form. The experience overseas is one where organised crime has actively targeted the taxation and regulatory environments.

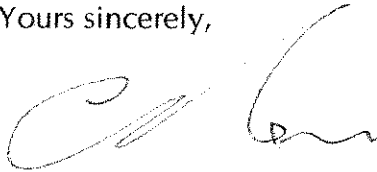
Given the changing and dynamic nature of organised crime, it is the view of Victoria Police that the ACC Board would benefit from the inclusion of the Australian Taxation Office ("ATO") Commissioner. The inclusion of the ATO Commissioner serves to provide a more holistic approach to dealing with organised crime at both the State and Commonwealth levels.

The ACC Chair

Section 7B (3) of the Act provides that the Commissioner of the Australian Federal Police is the Chair of the Board. As is appropriate and the system in existence across other national and state arrangements, the Chair of the ACC Board should be determined by the Board from its membership.

I recognise the importance of the work being undertaken by your committee in order to support the investigation of serious and organised crime by the ACC. I thank you for the opportunity to provide comment on the Act. If you require, I am available to address the PJC in respect to this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Christine Nixon', written in a cursive style.

Christine Nixon APM
Chief Commissioner
ACC Board member

23 / 8 / 2005